

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALFRED VALENTINO GARCIA,

Plaintiff,

v.

Case No. 6:09-CV-01103 LH/LFG

STATE OF NEW MEXICO, GOVERNOR BILL
RICHARDSON, NEW MEXICO CORRECTIONS
DEPARTMENT, JOE WILLIAMS, and
unidentified Corrections Department personnel and
contractors,

Defendants.

**GOVERNOR BILL RICHARDSON'S MOTION TO STAY
DISCOVERY PENDING A DECISION ON QUALIFIED IMMUNITY**

Defendant Bill Richardson, Governor of the State of New Mexico, by and through his attorneys, Long, Pound & Komer, P.A., move the Court to stay discovery until the Court rules his November 23, 2009 motion to dismiss the federal claims against him on qualified immunity grounds (Doc. 7). In support of this motion, the Governor states as follows:

Qualified immunity “protects public officials not only from liability, but from the burdens of discovery and litigation as well.” *DiCesare v. Stuart*, 12 F.3d 973, 979 (10th Cir. 1993). When qualified immunity is raised in a motion to dismiss, discovery therefore cannot go forward until the immunity question is resolved. *Id.*; *Workman v. Jordan*, 958 F.2d 332, 336 (10th Cir. 1992). Because allowing any discovery to proceed would require the Governor to bear the burden of having retained counsel participate in the litigation by reviewing written discovery, attending depositions, and performing related tasks, the required stay extends to discovery from, and by, all parties. *See, e.g., JM v. New Mexico Department of Health*, Civ. No. 07-604 RB/ACT, Doc. 90 (staying all discovery in multiple defendant case pending resolution of

defendant's motion to dismiss on qualified immunity grounds); *Escobar v. Las Cruces Public School District*, Civ. No. 07-1191 RB/KBM, Doc. 63 (same).

Pursuant to D.N.M.LR-Civ. 7.1(a), undersigned counsel conferred with counsel for the other Defendants regarding the relief requested through this motion. The other Defendants concur in the motion. Under D.N.M.LR-Civ. 7.1(a), counsel was not required to determine the Plaintiff's position, as he is a *pro se* inmate.

WHEREFORE, the Governor requests the Court to stay all discovery in this case until the Court determines whether he is entitled to qualified immunity.

LONG, POUND & KOMER, P.A.
Attorneys for Defendants

Little V. West /s/ electronically submitted
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of November, I filed the foregoing **Governor Bill Richardson's Motion to Stay Discovery Pending a Decision on Qualified Immunity** electronically through the CM/ECF system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic filing.

Peter A. Robertson,
Deputy General Counsel
peter.robertson@state.nm.us

I FURTHER CERTIFY that I mailed a copy, first class mail, postage prepaid addressed as follows:

Alfred Valentino Garcia, *pro se*
Lea County Correction Facility
6900 W Miller Drive
Inmate No. 50725
Hobbs, NM 88244

Little V. West /s/ electronically submitted
LITTLE V. WEST